

Food and Drug Administration, HHS

§ 17.2

(j) Section 303(f) of the act authorizing civil money penalties for any person who violates a requirement of the Family Smoking Prevention and Tobacco

Control Act which relates to tobacco products.

[60 FR 38626, July 27, 1995, as amended at 69 FR 43301, July 20, 2004; 73 FR 66752, Nov. 12, 2008; 75 FR 73953, Nov. 30, 2010]

§ 17.2 Maximum penalty amounts.

The following table shows maximum civil monetary penalties associated with the statutory provisions authorizing civil monetary penalties under the act or the Public Health Service Act.

CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS

U.S.C. Section	Former maximum penalty amount (in dollars) ¹	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
21 U.S.C.				
333(b)(2)(A)	55,000	For each of the first two violations in any 10-year period	2008	60,000.
333(b)(2)(B)	1,100,000	For each violation after the second conviction in any 10-year period	2008	1,200,000.
333(b)(3)	110,000	Per violation	2008	120,000.
333(f)(1)(A)	16,500	Per violation	2008	16,500 (not adjusted).
333(f)(1)(A)	1,100,000	For the aggregate of violations	2008	1,200,000.
333(f)(2)(A)	55,000	Per individual	2008	60,000.
333(f)(2)(A)	275,000	Per "any other person"	2008	300,000.
333(f)(2)(A)	550,000	For all violations adjudicated in a single proceeding	2008	600,000.
333(f)(3)(A)	10,000	For all violations adjudicated in a single proceeding	2007	10,000 (not adjusted).
333(f)(3)(B)	10,000	For each day the violation is not corrected after a 30-day period following notification until the violation is corrected	2007	10,000 (not adjusted).
333(f)(4)(A)(i)	250,000	Per violation	2007	250,000 (not adjusted).
333(f)(4)(A)(i)	1,000,000	For all violations adjudicated in a single proceeding	2007	1,000,000 (not adjusted).
333(f)(4)(A)(ii)	250,000	For the first 30-day period (or any portion thereof) of continued violation following notification	2007	250,000 (not adjusted).
333(f)(4)(A)(ii)	1,000,000	For any 30-day period, where the amount doubles for every 30-day period of continued violation after the first 30-day period	2007	1,000,000 (not adjusted).
333(f)(4)(A)(ii)	10,000,000	For all violations adjudicated in a single proceeding	2007	10,000,000 (not adjusted).
333(f)(9)(A)	¹ N/A	Per violation	2009	15,000 (not adjusted).
333(f)(9)(A)	N/A	For all violations adjudicated in a single proceeding	2009	1,000,000 (not adjusted).
333(f)(9)(B)(i)(I)	N/A	Per violation	2009	250,000 (not adjusted).
333(f)(9)(B)(i)(I)	N/A	For all violations adjudicated in a single proceeding	2009	1,000,000 (not adjusted).
333(f)(9)(B)(i)(II)	N/A	For the first 30-day period (or any portion thereof) of continued violation following notification	2009	250,000 (not adjusted).

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CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. Section	Former maximum penalty amount (in dollars) ¹	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
333(f)(9)(B)(i)(II)	N/A	For any 30-day period, where the amount doubled for every 30-day period of continued violation after the first 30-day period	2009	1,000,000 (not adjusted).
333(f)(9)(B)(i)(II)	N/A	For all violations adjudicated in a single proceeding	2009	10,000,000 (not adjusted).
333(f)(9)(B)(ii)(I)	N/A	Per violation	2009	250,000 (not adjusted).
333(f)(9)(B)(ii)(I)	N/A	For all violations adjudicated in a single proceeding	2009	1,000,000 (not adjusted).
333(f)(9)(B)(ii)(II)	N/A	For the first 30-day period (or any portion thereof) of continued violation following notification	2009	250,000 (not adjusted).
333(f)(9)(B)(ii)(II)	N/A	For any 30-day period, where the amount doubled for every 30-day period of continued violation after the first 30-day period	2009	1,000,000 (not adjusted).
333(f)(9)(B)(ii)(II)	N/A	For all violations adjudicated in a single proceeding	2009	10,000,000 (not adjusted).
333(g)(1)	250,000	For the first violation in any 3-year period	2007	250,000 (not adjusted).
333(g)(1)	500,000	For each subsequent violation in any 3-year period	2007	500,000 (not adjusted).
333 note	N/A	For the second violation (following a first violation with warning) within a 12-month period by a retailer with an approved training program	2009	250 (not adjusted).
333 note	N/A	For the third violation within a 24-month period by a retailer with an approved training program	2009	500 (not adjusted).
333 note	N/A	For the fourth violation within a 24-month period by a retailer with an approved training program	2009	2,000 (not adjusted).
333 note	N/A	For the fifth violation within a 36-month period by a retailer with an approved training program	2009	5,000 (not adjusted).
333 note	N/A	For the six or subsequent violation within a 48-month period by a retailer with an approved training program	2009	10,000 (not adjusted).
333 note	N/A	For the first violation by a retailer without an approved training program	2009	250 (not adjusted).
333 note	N/A	For the second violation within a 12-month period by a retailer without an approved training program	2009	500 (not adjusted).
333 note	N/A	For the third violation within a 24-month period by a retailer without an approved training program	2009	1,000 (not adjusted).
333 note	N/A	For the fourth violation within a 24-month period by a retailer without an approved training program	2009	2,000 (not adjusted).
333 note	N/A	For the fifth violation within a 36-month period by a retailer without an approved training program	2009	5,000 (not adjusted).
333 note	N/A	For the six or subsequent violation within a 48-month period by a retailer without an approved training program	2009	10,000 (not adjusted).
335b(a)	275,000	Per violation for an individual	2008	300,000.
335b(a)	1,100,000	Per violation for “any other person”	2008	1,200,000.
360pp(b)(1)	1,100	Per violation per person	2008	1,100 (not adjusted).

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CIVIL MONETARY PENALTIES AUTHORITIES ADMINISTERED BY FDA AND ADJUSTED MAXIMUM PENALTY AMOUNTS—Continued

U.S.C. Section	Former maximum penalty amount (in dollars) ¹	Assessment method	Date of last penalty figure or adjustment	Adjusted maximum penalty amount (in dollars)
360pp(b)(1)	330,000	For any related series of violations	2008	355,000.
42 U.S.C.				
263b(h)(3)	11,000	Per violation	2008	11,000 (not adjusted).
300aa-28(b)(1)	110,000	Per occurrence	2008	120,000.

¹ Maximum penalties assessed under The Family Smoking Prevention and Tobacco Control Act do not have a "former maximum penalty."

[75 FR 73954, Nov. 30, 2010]

§ 17.3 Definitions.

The following definitions are applicable in this part:

(a) For specific acts giving rise to civil money penalty actions brought under 21 U.S.C. 333(g)(1):

(1) *Significant departure*, for the purpose of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from requirements that is either a single major incident or a series of incidents that collectively are consequential.

(2) *Knowing departure*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(i), means a departure from a requirement taken: (a) With actual knowledge that the action is such a departure, or (b) in deliberate ignorance of a requirement, or (c) in reckless disregard of a requirement.

(3) *Minor violations*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(ii), means departures from requirements that do not rise to a level of a single major incident or a series of incidents that are collectively consequential.

(4) *Defective*, for the purposes of interpreting 21 U.S.C. 333(g)(1)(B)(iii), includes any defect in performance, manufacture, construction, components, materials, specifications, design, installation, maintenance, or service of a device, or any defect in mechanical, physical, or chemical properties of a device.

(b) *Person* or *respondent* includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, or other legal entity, or as may be defined in

the act or regulation pertinent to the civil penalty action being brought.

(c) *Presiding officer* means an administrative law judge qualified under 5 U.S.C. 3105.

(d) Any term that is defined in the act has the same definition for civil money penalty actions that may be brought under that act.

(e) Any term that is defined in Title 21 of the Code of Federal Regulations has the same definition for civil money penalty actions that may arise from the application of the regulation(s).

(f) Any term that is defined in the PHS Act has the same definition for civil money penalty actions that may be brought under that act.

(g) *Departmental Appeals Board (DAB)* means the Departmental Appeals Board of the Department of Health and Human Services.

§ 17.5 Complaint.

(a) The Center with principal jurisdiction over the matter involved shall begin all administrative civil money penalty actions by serving on the respondent(s) a complaint signed by the Office of the Chief Counsel attorney for the Center and by filing a copy of the complaint with the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

(b) The complaint shall state:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the identification of violations that are the basis